

**UNITED STATES PATENT AND TRADEMARK OFFICE**

Examiner: Brown, V.

Art Unit: 2635



*In re:*

*Applicant:* KIRCHER, J.

*Serial No.:* 09/806,356

*Filed:* March 29, 2001

***SUPPLEMENTAL APPEAL BRIEF***

July 21, 2006

COMMISSIONER FOR PATENTS  
P O Box 1450  
Alexandria, VA 22313-1450

Sir:

This Supplemental Appeal Brief is responsive to the Office  
Action of February 23, 2006.

I hereby certify that this correspondence is being  
deposited with the United States Postal Service  
as first class mail in an envelope addressed to:  
Commissioner for Patents, P.O. Box 1450,  
Alexandria, VA 22313-1450.  
On 7/21/06

### Status of Claims

Claims 18-21, 23, 29-31, and 35-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borgstahl, et al, U.S. patent no. 5,909,183 in view of Glehr, U.S. patent no. 5,723,911.

Claims 22, 24, 25 and 32 are rejected under 35 U.S.C. 103(a) over the patent to Borgstahl in view of Glehr and further in view of Joao, U.S. patent 5,917,405.

Grounds of Rejection to be Reviewed on Appeal

The only grounds of rejection to be reviewed on appeal are whether claims 18-21, 23, 29-31 and 35-37 are unpatentable in the sense of 35 U.S.C. 103 over Borgstahl, et al U.S. patent no. 5,909,183 in view of Glehr U.S. patent 5,723,911.

Claims 22, 24, 25 and 32 stand and fall together with the independent claim on which they depend.

## Argument

In his rejection of the claims the Examiner applied the patent to Borgstahl. This reference however fails to disclose an if-then condition with respect to the initiating of the data connection, instead the patent to Borgstahl discloses that each time the devices detect each other, a short negotiation takes place and each device decides whether it wants to network with the other device without having an if-then condition. This is disclosed in column 14, lines 10-33.

The patent to Borgstahl does not disclose that the limit value or the region is predetermined, because the threshold is random depending on the environment. Operating the wireless communication links at a low power remains the threshold random, because also at lower power the threshold depends on the environment and is not predetermined.

In the arguments related to his rejection of the claims, the Examiner admits that claims 18 and 29 are new. However, the Examiner believes that claims 18 and 19 are obvious because the patent to Borgstahl is not explicit in teaching a position determining device and the patent to Glehr shall teach a position determining device. However, the patent to Glehr does not disclose a position determining device. Instead,

the patent to Glehr discloses a distance detecting device based on the transmit time being measured. This is disclosed in column 4, lines 47-54.

Besides this, it would not be obvious to one of ordinary skill in the art to have a distance detecting device coupled to the data terminal and controlling the data terminal by the position determining device in such a way, that the construction of the data connection is initiated. According to the patent to Glehr the door handle and not the distance detecting device acts as a tripping means.

In view of the above presented remarks it is believed that claims 18 and 29 can not be considered as obvious from the combination of the teachings of the patent to Borgstahl and Glehr as applied by the Examiner in the sense of 35 U.S.C 103(a).

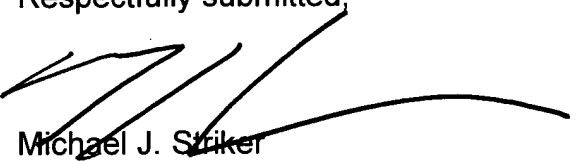
Claims 19 and 29 should be considered as patentably distinguishing over the art and should be allowed.

The same arguments are applicable with respect to claims 35, 36 and 37 which are additional independent claims, and these claims should be allowed as well.

As for the retained independent claims, these claims depend on the corresponding independent claims, they share their presumably allowable features, and they should be allowed as well.

Reconsideration of the present application and reversal of the Examiner's rejection of the claims is most respectfully requested.

Respectfully submitted,



Michael J. Striker  
Attorney for Applicants  
Reg. No. 27233